

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 314 of 1986

Date of decision: 01-10-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VASARAMBHAI GOVABHAI

Versus

MAMLATDAR  
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Appearance:

MR PM THAKKAR for Petitioner  
MR VC DESAI for Respondent No. 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/10/96

ORAL JUDGEMENT

The petitioner challenged the order annexure-B dated 20-2-1984 of respondent No.1 and the order dated 10-10-1984 of the Assistant Collector, Mehsana, by which the order of respondent No.1 was confirmed. Respondent No.2 filed suit on 8-11-1977 before respondent No.1 claiming therein that he has the right of way to approach his field bearing Survey No.317/2 from the boundary line of the petitioner's land bearing survey No.317/1. Prayer

was made therein that the petitioner be restrained from causing any obstruction to respondent No.2 to approach the aforesaid field. On May 12, 1978 the Mamlatdar decided the matter against respondent No.2. Respondent No.2 filed revision application before the Deputy Collector. The revision application was allowed on 18th August, 1980 and the matter was remanded back to respondent No.1. Respondent No.1, on 20th February 1984 decided the matter in favour of respondent No.2 and injunction as prayed for has been granted. The petitioner filed revision application before the revisional court and that has been dismissed under order dated 10th October, 1984. Hence the present special civil application.

Heard the learned counsel for the parties.

2. Both the courts below concurrently held in favour of respondent No.2 that he has right of way to approach his field bearing survey No.317/2 from the boundary line of petitioner's land bearing survey No.317/1, and they found it to be a case where the petitioners have obstructed respondent No.2 from approaching his field. This court sitting under Article 226 of the Constitution of India will not reappreciate or go on the question of sufficiency or adequacy of the evidence nor this court will go on the question whether evidence produced by one party should be accepted or not. These are matters within the exclusive jurisdiction of the courts below. After considering the evidence of both the parties finding has been recorded on the facts by the courts below, and that can be questioned before this court if the petitioner is able to make out a case of perversity in the finding. Even if it is taken to be a case where two views are possible on the given set of evidence adduced by the parties, this court will not interfere with the finding recorded by the authorities below. The counsel for the petitioner is unable to make out any case for interference by this court with the concurrent finding of fact of the courts below.

3. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

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